VIRGINIA LAW REGISTER

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The University Law School.

The Law School of the University of Virginia this year enters upon the first term of the three year course. For the first time in its history the school finds itself worthily housed in fitting quarters, the building which has now been erected for the exclusive use of this school being one worthy of the science taught, of the great men who have made the school what it now is, and of the great University, to whose classic buildings it is a beautiful addition. The course is divided as follows:

FIRST YEAR.—1. Study of Cases, Legal Biography, Brief Making, Interp. Statutes. 2. Contracts. 3. Criminal Law. 4. Public Speaking. 5. Agency. 6. Torts, including Master and Servant. 7. Carriers and Bailments. 8. Administrative Law. 9. Negotiable Paper. 10. International Law. 11. Sales. 12. Domestic Relations. 13. Suretyship and Guaranty.

SECOND YEAR.—14. Equity Jurisdiction. 15. Equity Procedure 16. Common-Law Pleading and Practice. 17. Constitutional Law. 18. Real Property (begun). 19. Private Corporations. 20. Pleading in Virginia. 18a. Real Property (cont.). 21. Admiralty. 22. Practice in Virginia, including Extraordinary Remedies. 18b. Real Property (completed). 23. Code Pleading. 24. Parliamentary Law. 25. Insurance.

THIRD YEAR.—26. Criminal Procedure. 27. Wills and Administration. 28. Taxation. 29. Partnership. 30. Bankruptcy. 31. Mining and Irrigation. 32. Conflict of Laws. 33. Federal Jurisdiction and Procedure. 34. Damages. 35. Public Corporations. 36. Legal Ethics, Preparation of Cases and Practice of the Law. 37. Evidence. 38. Roman Law.

The wisdom of the three year course from the University standpoint is unquestionable and from the standpoint of those who believe the adage that "No lawyer ever becomes a good lawyer who does not come to the bar a good lawyer," its ex-

cellency cannot be questioned; but when it is considered that few men finish their academic course before they are twenty-one, and if they desire a B. L. degree they must be at least twenty-four before they can get to work, it does seem from the parent's standpoint an unnecessarily long-drawn-out course.

The plan of study as laid down seems to us an excellent one, though we think the first subject, "Legal Biography, Brief Making and Interpretation of Statutes" instead of being taken up by the tyro should be relegared to the last half of the third term, and "Criminal Procedure" take its logical place along with "Criminal Law." "Partnership" and "Public Speaking" might change places with advantage, in our humble opinion.

Virginia Reports, Volume 111.

The present volume of Virginia Reports brings the decisions of our Supreme Court of Appeals up to the March Term of the current year. One hundred and twenty-five cases are reported, of which one hundred and eighteen are civil and seven are criminal. Of the civil cases fifty-one are affirmed, sixty-two reversed, two writs of mandamus are granted, two appeals dismisbed and one writ refused and the opinion given for the refusal. Of the seven criminal cases four were affirmed, two reversed and one dismissed. Every case in this volume has been either annotated, reviewed, or commented upon by the REGISTER. There are several very interesting questions of novelty and importance decided, and an examination of the book as a whole convinces one that the opinions are brief and concise, and whilst not always agreeing with some of the views of the Court, as we have attempted to show in the pages of the REGISTER, we believe that our Supreme Court compares most favorably with any Court in the Union.

Uniform Divorce Laws.

The uniformity of law is in the air and the late scandal in high life caused by the marriage of a multi-millionaire who has more money than morals, has called the public attention sharply to the necessity of a reformation in the divorce laws of the various states. Few people are aware that a uniform divorce law

was prepared and adopted by a congress on divorce composed of delegates from many of the states, who met in 1906 and drew up a plan for a uniform divorce law. This plan formulated into a sort of code was recommended for adoption at a conference of the Commissioners on Uniform State Laws. These Commissioners, we believe, were regularly appointed from all the states and territories, with the exception possibly of Nevada. New Jersey, Delaware, and Wisconsin have adopted this uniform divorce law. Most of the states—nearly ninety per cent of them, we believe—have comparative uniformity in the causes for divorce, these causes being the same as in our State. Adultery, bigamy, conviction of felony, desertion for a certain period —generally three years—are held as grounds for absolute divorce in most of the states. Natural or incurable impotency at the time of entering into the contract, two years absence as a fugitive from justice where party is indicted for felony, prostitution of wife prior to marriage without knowledge of husband or the fact of the wife being enceinte at time of marriage by some other than the husband and without his knowledge, are grounds for divorce in Virginia not common to many of the states; whilst cruelty and drunkenness, which in many states are grounds for absolute divorce, are in Virginia only grounds for divorce *a mensa*. It seems to us that the Virginia causes for absolute divorce are about the only ones which should prevail anywhere and we believe the tendency to limit divorce is growing despite the clamor to the contrary.

The great evil is not so much the causes for which divorces are allowed as the methods by which they are obtained—in other words, reformation ought to commence with procedure. No suit for divorce ought to be allowed in any jurisdiction in which the party plaintiff had not been a resident for at least two years, and affidavit ought to be required that residence had not been sought for the purpose of the suit. A divorced party forbidden to marry in the forum which had jurisdiction over him or her ought not to be allowed to marry in any other jurisdiction. Since the decision in Hammond *v.* Hammond it would appear that some Federal statute ought to be enacted which would settle the status of divorced—or supposed-to-be-divorced

—people who are residents of different states at the time of the divorce. The present condition of affairs is a disgrace to our civilization and a growing menace to morals and decent living.

Uniform Marriage Law.

The same body known as the Conference of Commissioners of Uniform State Laws has had before it for several years the consideration of a proposed uniform marriage law. The matter was discussed with some care this summer. The proposed act confines itself more towards the regulation of the form of the marriage contract, as the prospect of a uniform law of dissolution of marriage seems almost hopeless at present. The abolition of common-law marriages and the absolute necessity of a license to authorize a legal marriage, is one of the main features. In Virginia since the decision in the case of Offield v. Davis, 100 Va. 250, common-law marriages are null and void. The proposed act requires the license to be issued in the district in which the marriage is to be solemnized, and there must be a five days interval between the application for the license and its issue. Applications for license are to be posted and published.

One feature of the proposed act seems to us to be decidedly objectionable. It provides that the marriage of a minor without the consent of the parent or guardian shall be voidable upon the application of the minor *or parent,* before the minor has become of age and within thirty days after obtaining notice of it. Such marriages ought to be absolutely vo. -and the proposed legislation in this regard would open the door to gross wrong and injustice.

World Wide Uniformity in All Law.

The "Journal of the Society of Comparative Legislation" in a summary of the legislation of the British Empire give a resumé of the lines on which the different peoples of the earth are working through their legislative bodies, which indicates that certain great ideas are becoming the common property of all nations, and that all are striving towards a com-

mon end to aid the weak, curb the strong and generally advance the welfare of the whole community; legislation for the reformation of children and juvenile offenders; for the compensation of workmen at the cost of the employers, and for pensions for the old. The United States has passed one arbitration treaty and several more are pending in the Senate. Denmark has ratified one arbitration treaty with our own nation and Norway. The latter country and France have amended their law of divorce, affording greater facilities, and state insurance for the sick has been provided for in Norway. Tasmania has taken very seriously the office of coroner and has made important changes in the duties of that official. New South Wales has amended its libel law and several of the English Colonies have followed our lead in allowing the legitimation of children born before marriage by the subsequent marriage of their parents. Cape Colony has taken a wise step in the establishment of labor colonies for indigent persons.

It is a great pity that there should not be some way by which the important legislative acts of all countries could be collected each year and put in a volume which could be at the disposal of all interested in the subject.

At the recent conference of the governors of the different states a sort of clearing house was proposed, by which there should be in each state the laws of all, with some one in charge to examine and report upon them. We believe the libraries of the states receive copies of the legislative acts of every other state, year by year; but the volumes are scattered through the library along with the reports of the respective states, or consigned to some dark and forgotten corner. We believe it would be an excellent thing to have in one department of the library the acts of the different states collected together and arranged by year in alphabetical order, and more facility afforded to comparative research and examination.

Employers' Liability and Compensation.

And speaking of workmen's compensation acts, the conference of governors to which we have alluded has brought out the fact that Ohio, Massachusetts, New Jersey and Kansas have passed laws upon this subject which have not yet run the gauntlet of the courts. The English act goes to an extent which it is hard for us to realize in this country. We referred to this law in commenting upon the case of Dewhurst *v.* Mather, in the REGISTER, Vol. XIV, p. 384.

Proceedings before International Tribunals.

The various conventions which have made the Hague a sort of International Center have given very little consideration to the method by which the attendance of witnesses and the production of documents may be compelled before an international tribunal constituted in accordance with any treaty or convention to which any country is a party. A bill has been introduced in the British Parliament intended to strengthen the power of such tribunals. The Secretary of State is to issue orders enforcing the attendance of witnesses from Great Britain or compelling the production of documents under the control of any British subject. These orders are to have the same effect as if the proceedings were in the domestic high court and the process issued by that tribunal. No doubt laws of a similar nature will be passed by the various nations entering into these conventions and we shall see the international courts becoming the most dignified and influential bodies in the world—not only dignified, influential and useful, but exerting a power for universal peace and brotherhood hard to be overestimated.

Judgments obtained in one state of our union by personal service have always been enforceable by action upon them in

The Comity of Nations and Suits on Foreign Judgments.

any other state, though of course not directly enforceable. With us the regularity of the judgment under the laws of the forum where obtained is one ground of attack. Our courts will also enquire, when a judgment of a sister state is sought to be enforced in the home courts, as to the jurisdiction of the court over the case when it pronounced judgment. Bowler *v.* Huston, 30 Grattan 266. And the fact of a summons having been regularly served or the party having appeared in person or by attorney must affirmatively appear; and in the case of Fisher *v.* March, 26 Grattan 765, our Supreme Court has said that in case of a personal judgment the record may show upon its face whether the debtor did or did not appear, and if it does, then the judgment will have effect accordingly. But it may not show upon its face whether the debtor did or did not appear. In that case the presumption would be in favor of the validity of the judgment; but the defendant would have a right in such case by his pleading and evidence to aver and prove the contrary; and he would have such right even though the record should state upon its face that the defendant did appear. And it has been held in West Virginia, in the case of Wandling *v.* Straw, 25 W. Va. 692, that with respect to foreign judgments a judgment debtor in an action against him on the judgment of another state, may successfully defend by showing that the attorney who entered the appearance for him had no authority to do so. It must be remembered, however, that under the decision of Clark *v.* Day, 2 Leigh 172, judgments of another state of the Union are not to be regarded here as foreign judgments, but are to have the same effect as judgments of our own courts.

Of course fraud and collusion is always a defence upon a foreign judgment or a judgment obtained in another state. In the case of Hatfield *v.* Jamieson, 2 Munf. 53, some question is raised as to how far the sentence of a foreign Court of Admiralty, or other foreign tribunal, is to be regarded as evidence in the courts of Virginia.

In the case of Draper *v.* Gorman, 8 Leigh 637, Parker, J.,

laid down the law that in American state courts the unbroken current of decision has been that foreign judgments, as contra-distinguished from the judgments of the courts of a sister state are not conclusive; although in Clark *v.* Day, 2 Leigh 172, and in Vaught *v.* Neabor, 99 Va. 569, it is laid down as beyond controversy that the validity of the contract upon which a judgment is rendered by a court of competent jurisdiction in a *foreign* state is established by judgment and the judgment must be given the same credit and faith in the state in which it is sought to be enforced as it had in the state where rendered. The apparent conflict in these decisions grows out of the fact that our courts despite the language used in Clarke *v.* Day continue to speak of judgments obtained in one state of the Union when proceeded on in another as *foreign* judgments.

In the case of Scarpetta *v.* Lowenfeld, lately decided in one of the English high courts of justice, a plaintiff had obtained damages for breach of contract in the Court of Appeal at Florence, Italy, and was suing on the judgment in England. Defence was made that under the Italian law neither party to the action could testify and that this was such an offence against English rules of substantial justice that the English court would re-open the case. Counsel quoted Pemberton *v.* Hughes, in which Lord Lindley said: "If a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter with which it is competent to deal, English courts never investigate the propriety of the proceedings in the foreign court unless they offend against English rules of substantial justice."

Mr. Justice Lawrence called counsel's attention to the fact that in England up to 1846 the rule of evidence was the same and that therefore the Italian rule could not well be regarded as contrary to substantial justice. When it can be shown that a foreign judgment was obtained without due notice to the party affected the English courts would not recognize it, but in all other cases the courts were very unwilling to say that the rules of natural justice had been disregarded.

It seems to us the rule in England is stronger and tending more to universal comity than our rule.

Interstate vs. Intrastate—Bad Reasoning.

The conference of governors to which we alluded above seems to have waked up all of a sudden to the danger which threatens the rights of the States from a decision of Judge Sanborne of the United States Circuit Court annulling the Minnesota intrastate railway rates as fixed by the Railroad and Warehouse Commission of that State. The REGISTER—almost to the point of seeming a "little daft" on the subject—has been for the last five years calling attention time and again to the "sapping and mining" of States Rights by all the Federal courts, subordinate and supreme alike. But in the present instance and in view of the decision of the Supreme Court of the United States in Prentis *v.* Atlantic Coast Line, etc., 211 U. S. 210, we do not see how Judge Sanborne could have decided other than he did if it were proven that the rates established were confiscatory.

The difficulty, it seems to us, is not so much in Judge Sanborne's decision as in the reasons he gave for it.

The Minnesota law reduced the passenger rates of Minnesota from 3 cents to 2 cents a mile, and the Commission orders reduced merchandise rates from 20 to 25 per cent. and the rates on bulky commodities something over 7 per cent. After the Special Master appointed by the court had reported his findings and recommendations, Judge Sanborne rendered an opinion affirming the report of the Master. Judge Sanborne found that the rates imposed were confiscatory, inasmuch as they did not permit the earning of a fair return upon that part of the railway companies' capital invested in the State of Minnesota; under the rates enacted, as income upon this capital was found by the Master to range between 2½ and 3.35 per cent., while it was the opinion of the court that a 7 per cent. return would have been no more than fair. The rates, therefore, were fixed in violation of that provision of the Federal Constitution which forbids the taking of property without due process of law.

This was enough to justify the annulment of the rates complained of, but the court, again following the findings of the Master as to fact, declared that these Minnesota rates, though they were in terms applicable only to intrastate commerce, really

operated as a burden upon and a regulation of interstate commerce, which is the exclusive concern of the Federal Government. It is on this point that the Conference of Governors has sounded the alarm about the invasion of State rights. They insist with ample justification from the Constitution and the law, that intrastate commerce is exclusively a matter of State concern. The Federal act to regulate commerce, indeed, declares that its provisions are not applicable to the transportation of persons or properties wholly within one State. The point at issue is whether these Minnesota regulations, though in terms applying only to intrastate traffic, really transcended the jurisdiction and fell upon interstate commerce as a burden and regulation. The facts are, as found by the Master, that the rates within Minnesota were fixed so low that they compelled the railroads affected to reduce their lawful interstate rates, thereby leading to discrimination against other interstate carriers contrary to the letter and intent of the Federal law. For instance, the intrastate rate fixed by the State of Minnesota between St. Paul and Moorhead, a distance of 250 miles, was 20 per cent. lower than the lawful interstate rate between St. Paul and Fargo, lying in the State of North Dakota just across the Red River, one mile beyond Moorhead. The Master found that the effect of this was to increase the passenger business of the Northern Pacific Railroad between St. Paul and Fargo. Counsel of the complainants pointed out that, as a consequence, "a large portion of all rates for the transportation of merchandise in the district bounded by the Missouri River, the Canadian Boundary, the Pacific Ocean, and the Mexican boundary, either have come down or must come down."

In confirming this last portion of the Master's Report and basing his decision upon it in part, we think Judge Sanborne has fallen into grievous error, but one which the Supreme Court will hardly notice, as it will doubtless base its opinion solely upon the question as to whether the rates fixed are confiscatory or not. It is absurd, we think, to hold that because a railroad increases its interstate rates in consequence of a State compelling it to lower its intrastate rates, that therefore a federal question is involved and the action of the State as to that which is clearly

within its right—reasonable regulation of rates within its own territory—can be interfered with by a federal court. Especially is this true in view of the fact that the regulation of interstate rates is under the control of the Interstate Commerce Commission. The far reaching effect of a decision allowing a federal court to take jurisdiction in such a case can be easily seen. A State may fix rates at a reasonable figure; the railroads will then raise their interstate rates claiming that they are doing so because of the intrastate regulation. The federal court then takes jurisdiction and settles the matter to suit itself. A more dangerous, mischievous and illogical doctrine cannot well be imagined. Whether the action of the governors is wise or not, or whether it avails anything in the present instance, it at least calls attention very strongly to a very unfortunate and in our judgment very absurd opinion emanating from a court that ought to know better.